



UNITED STATES PATENT AND TRADEMARK OFFICE

C-27
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/316,851	05/21/1999	HAI BUI	003543.P002	8389

7590 06/23/2003

BLAKELY SOKOLOFF TAYLER & ZAFMAN LLP
12400 WILSHIRE BOULEVARD
7TH FLOOR
LOS ANGELES, CA 90025

EXAMINER

DESAUTO, MATTHEW F

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 06/23/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary	Application No.	Applicant(s)
	09/316,851	BUI, HAI
	Examiner	Art Unit
	Matthew F DeSanto	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 January 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-8,13,16-23,34,35 and 37-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-8,13,16-23,34,35 and 37-50 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-6, 8, 13, 16-18, 20, 21, 35, 40-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson et al. (WO 9318802).

Peterson et al. discloses an irrigation system with a reservoir (25), pump line (55) coupled to the pump (21a), pressure sensor (13), accumulator (3), controller coupled to pressure senor (29), aspiration system, pump, line, and pressure sensor and a medical device coupled to the irrigation line. (Page 8, lines 1-2).

Peterson et al. teaches a flexible membrane (11) separating a first (7) and second (9) chamber of the accumulator and in communication with the pressure transducer/sensor, and irrigation line. (Figures 1-6 and entire reference)

Peterson et al. also discloses a controller that varies the pump, determines a flow rate by providing output signals (Figures 1-6 and entire reference). It is the examiner's position that the Peterson et al. patent teaches all of the structural limitations of the claims and their functions, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 4-8, 13, 16-23, 34, 35, 37-50 rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al. as applied above, and further in view of Voss et al.

Peterson et al teaches all of the limitations of the claimed invention except explicitly stating that the controller determines an actual fluidic resistance from the flow rate and provides an output signal.

Voss et al. teaches a fluid flow device that monitors fluidic resistance through the monitor can detect the fluids "fluidic resistance" and calculate a resistance to flow.

Peterson et al. teaches a second embodiment of his device containing a device that will monitor fluid flow such as an impedance monitor. (Page 6, lines 15-17).

Therefore, it is the position it would have been obvious for one of ordinary skill in the art to modified (if needed) the impedance monitor of Peterson et al. with the impedance and fluidic calculator of resistance to allow the Peterson et al. device to monitor fluidic resistance since it well known in the art of fluid flowing systems to monitor impedance as taught by Peterson et al. if not calculate fluid resistance as explicitly taught by Voss et al. With respect to valves are well known in the art as well as being taught by Peterson et al. and are attached to all types of fluid flow devices to

prevent backflow, maintain pressure, prevent contamination, and to include several other purposes.

Response to Arguments

5. Applicant's arguments filed 1/13/03 have been fully considered but they are not persuasive. The applicant makes no arguments to how the prior art and the applicant's invention are different. The Applicant does not show any structural difference, and therefore the examiner still holds the past rejections over the claimed invention.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 8:30-6:00.

Matthew DeSanto
June 18, 2003




BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700